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## CMS VOLUNTARY SELF-REFERRAL DISCLOSURE PROTOCOL

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### I. INTRODUCTION

The physician self-referral law: (1) prohibits a physician from making referrals for certain designated health services payable by Medicare to an entity with which he or she (or an immediate family member) has a financial relationship, unless the requirements of an applicable exception are satisfied; and (2) prohibits the entity from filing claims with Medicare (or billing another individual, entity, or third-party payer) for any improperly referred designated health services. A financial relationship may be an ownership or investment interest in the entity or a compensation arrangement with the entity. The statute establishes a number of specific exceptions and grants the Secretary of the Department of Health and Human Services (the "Secretary") the authority to create regulatory exceptions for financial relationships that do not pose a risk of program or patient abuse.

The Affordable Care Act (ACA), enacted on March 23, 2010, provides for the establishment of a voluntary self-referral disclosure protocol (SRDP), under which providers of services and suppliers may self-disclose actual or potential violations of the physician self-referral law, section 1877 of the Social Security Act (the "Act"). Section 6409(b) of the ACA grants the Secretary the authority to reduce the amount due and owing for all violations of the physician self-referral law. Section 6409(a)(3) of the ACA explicitly states that the SRDP is separate from the advisory opinion process related to physician referrals set forth in 42 C.F.R. §§ 411.370 through 411.389 (all citations to the Code of Federal Regulations in this document are citations to Title 42). Thus, a provider of services or supplier may not disclose an actual or potential violation through the SRDP and request an advisory opinion for conduct underlying the same arrangement(s) concurrently.

Section 6402 of the ACA establishes a deadline for reporting and returning overpayments by the later of: (1) the date which is 60 days after the date on which the overpayment was identified; or (2) the date any corresponding cost report is due, if applicable. At the time that the Centers for Medicare & Medicaid Services (CMS) acknowledges receipt of a submission to the SRDP, the obligation under section 6402 of the ACA to return the disclosed overpayment within 60 days will be suspended until a settlement agreement is entered, the provider of services or supplier withdraws from the SRDP, or CMS removes the provider of services or supplier from the SRDP. See § 401.305(b)(2)(ii).

### II. THE SRDP

The SRDP is open to all persons (as defined at § 401.303) who may have received an overpayment as a result of an actual or potential violation of section 1877 of the Act. For purposes of the SRDP, a person submitting a disclosure to the SRDP will be referred to as a "disclosing party." The fact that a disclosing party is already subject to Government inquiry (including investigations, audits or routine oversight activities) will not automatically preclude acceptance of a disclosure. The disclosure, however, must be made in good faith. A disclosing party that attempts to circumvent an ongoing inquiry or fails to fully cooperate during the self-disclosure process will be removed from the SRDP.

The SRDP cannot be used to obtain a CMS determination as to whether an actual or potential violation of the physician self-referral law occurred. As stated above and in section 6409(a)(3) of the ACA, the SRDP is separate from the CMS physician self-referral advisory opinion process. The SRDP is intended to facilitate the resolution of only matters that, in the disclosing party's reasonable assessment, are actual or potential violations of the physician self-referral law. Thus, a disclosing party should make a submission to the SRDP with the intention of resolving its overpayment liability exposure for the conduct it identified. In keeping with these principles, for each disclosed noncompliant financial relationship, the disclosing party must either: (a) state that the financial relationship was noncompliant, or (b) state that, because it cannot confirm that the financial relationship complied with the physician self-referral law, it is certifying noncompliance with the law.

CMS will review the circumstances surrounding the matter disclosed to determine an appropriate resolution. In some instances, Medicare contractors may be responsible for processing any identified overpayment. CMS is not bound by any conclusions made by the disclosing party under the SRDP and is not obligated to resolve the matter in any particular manner. Nevertheless, CMS will work closely with a disclosing party that structures its disclosure in accordance with these SRDP instructions to reach an effective and appropriate resolution. As a condition of disclosing a matter pursuant to the SRDP, the disclosing party agrees that no appeal rights attach to claims relating to the conduct disclosed if resolved through a settlement agreement. If the disclosing party withdraws or is removed from the SRDP, the disclosing party may appeal any overpayment demand letter in accordance with applicable regulations. Furthermore, disclosing parties agree that, if the disclosed matter is not resolved through the SRDP, the rules at §§ 401.301 through 401.305 and §§ 405.980 through 405.986 shall apply from the date of the initial submission to the SRDP.

### III. COOPERATION WITH THE INSPECTOR GENERAL OF THE DEPARTMENT OF HEALTH AND HUMAN SERVICES (OIG) AND THE DEPARTMENT OF JUSTICE (DOJ)

Participation in the SRDP is limited to actual or potential violations of the physician self-referral law. OIG's Health Care Fraud Self-Disclosure Protocol is available for identifying, disclosing, and resolving conduct that raises potential liabilities under other federal criminal, civil, or administrative laws. See [Self-Disclosure Protocol 2021 \(hhs.gov\)](#) (November 8, 2021). For example, conduct that raises liability risks under the physician self-referral law may also raise liability risks under OIG's civil monetary penalty authorities regarding the Federal anti-kickback statute and should be disclosed through OIG's Health Care Fraud Self-Disclosure Protocol. Disclosing parties should not disclose the same conduct under both the SRDP and OIG's Health Care Fraud Self-Disclosure Protocol.

Upon review of the disclosing party's submission(s), CMS will coordinate with OIG and DOJ. CMS may conclude that the disclosed matter warrants a referral to law enforcement for consideration under its civil and/or criminal authorities. When appropriate, CMS may use a disclosing party's submission(s) to prepare a recommendation to OIG and DOJ for resolution of False Claims Act, civil monetary penalty, or other liability. Accordingly, the disclosing party's initial decision regarding where to disclose a matter involving noncompliance with section 1877 of the Act should be made carefully.

Disclosing parties who currently have corporate integrity agreements (CIAs) or integrity agreements (IAs) with OIG should also comply with any disclosure or reportable event requirements under such agreements. A reportable event that involves solely a physician self-referral issue should be disclosed to CMS using the instructions set forth in this SRDP with a copy to the disclosing party's OIG monitor. Questions about any applicable CIA or IA requirements should be directed to the disclosing party's OIG monitor.

### IV. INSTRUCTIONS REGARDING THE VOLUNTARY SELF-REFERRAL DISCLOSURE PROTOCOL SUBMISSION

The disclosing party will be expected to make a submission as follows.

(Note that, if multiple entities from a network or system are submitting self-disclosures, each entity that is separately enrolled in Medicare must submit a separate disclosure.)

#### A. Required elements of a complete disclosure

1. **The nature of the noncompliance being reported to the SRDP determines the required forms and format of the disclosure.** This section explains the required elements of a complete disclosure. (A brief summary of the forms and other materials that must be submitted to the SRDP can be found in section IV.A.2 below.)
  - a. For disclosures of noncompliance arising solely from the failure of a physician-owned hospital to disclose physician ownership on any public website or in any public advertising (see § 411.362(b)(3)(ii)(C)), use the special instructions available [here](#).
  - b. For disclosures of noncompliance arising from the failure of a physician practice to qualify as a group practice under § 411.352, the self-disclosure must include the following:
    - i. **SRDP Disclosure Form;**
    - ii. **Group Practice Information Form** (note that the Group Practice Information Form should be used only by physician practices that are reporting noncompliance with the physician self-referral law arising from the failure to qualify as a group practice under § 411.352);
    - iii. **Financial Analysis Worksheet;** and
    - iv. **Certification.**
  - c. For all remaining types of noncompliance, the self-disclosure must include the following:
    - i. **SRDP Disclosure Form;**
    - ii. **Physician Information Form(s)** (unless the disclosure qualifies for the special rule for physicians who stand in the shoes of their physician organization noted in section IV.A.2.c below, the disclosing party must submit a separate Physician Information Form for each physician included in the disclosure);
    - iii. **Financial Analysis Worksheet;** and
    - iv. **Certification.**

In addition to all the required information, the disclosing party may submit an optional cover letter, including information that the party believes may be relevant to CMS' evaluation of the disclosure.

**Note on the proper use of the Group Practice Information Form and the Physician Information Form(s):** The Group Practice Information Form should be completed only by physician practices that are reporting noncompliance with the physician self-referral law arising from the failure to qualify as a group practice under § 411.352. For all other reasons for noncompliance, the noncompliance must be reported using the Physician Information Form(s) (except noncompliance arising solely from the failure of a physician-owned hospital to satisfy the requirement at § 411.362(b)(3)(ii)(C)). In most circumstances, the disclosing party will use either the Group Practice Information Form or the Physician Information Form(s), but not both. The following examples illustrate the required elements of a complete submission to the SRDP for different types of reported noncompliance:

- **A hospital had several compensation arrangements with physicians and physician organizations that did not satisfy the requirements of any applicable exception:** the disclosure must include the SRDP Disclosure Form, Physician Information Form(s), the Financial Analysis Worksheet, and a certification in accordance with section IV.A.2.e below.
- **A physician practice intended to rely on the in-office ancillary services exception at § 411.355(b) to permit referrals by physicians in the practice, but it could not make use of the exception because it did not qualify as a group practice under § 411.352:** the disclosure must include the SRDP Disclosure Form, the Group Practice Information Form, the Financial Analysis Worksheet, and a certification in accordance with section IV.A.2.e below.
  - If the physician practice is also disclosing noncompliance related to a financial relationship with a physician or immediate family member of a physician who is not a physician in the group, then the practice should also include a Physician Information Form related to that individual only.
- **A physician practice that qualified as a group practice under § 411.352 billed Medicare for certain services that did not fully comply with the in-office ancillary services exception:** the disclosure must include the SRDP Disclosure Form, Physician Information Form(s), the Financial Analysis Worksheet, and a certification in accordance with section IV.A.2.e below.
- **A physician made referrals to a home health agency that was owned by the physician's spouse and the ownership or investment interest did not satisfy the requirements of any applicable exception:** the disclosure must include the SRDP Disclosure Form, Physician Information Form(s), the Financial Analysis Worksheet, and a certification in accordance with section IV.A.2.e below.

## 2. Description of required elements of a disclosure:

- a. SRDP Disclosure Form:** The SRDP Disclosure Form provides information about the disclosing party, including information regarding the disclosing party's history of abuse, pervasiveness of noncompliance, and steps to prevent future noncompliance. The SRDP Disclosure Form is attached to this document.
- b. Group Practice Information Form:** The Group Practice Information Form includes questions that are specific to physician practices that failed to qualify as a group practice under § 411.352. As such, the Group Practice Information Form should be completed only by physician practices that are reporting noncompliance with the physician self-referral law arising from the failure to qualify as a group practice under § 411.352. If the noncompliance being reported by the physician practice arose solely from the failure of the practice to qualify as a group practice under § 411.352, then the physician practice need not complete Physician Information Forms for any physician in the practice who made prohibited referrals to the practice. The Group Practice Information Form is available on our website [here](#). Note that, if a physician practice consists of two or more physicians and does not qualify as a group practice under § 411.352, the practice may not rely on the exception for physician services at § 411.355(a) or the exception for in-office ancillary services exception at § 411.355(b).
- c. Physician Information Forms:** For all forms of reported noncompliance other than the failure of a physician practice to qualify as a group practice under § 411.352 or the failure of a physician-owned hospital to satisfy the requirement at § 411.362(b)(3)(ii)(C), the disclosing party must report noncompliance using the Physician Information Forms. Except as noted immediately below, for each physician included in the disclosure, the disclosing party must submit a separate Physician Information Form providing details of the noncompliant financial relationship(s) between the physician and the disclosing party. The Physician Information Form is available on our website [here](#).

**Special rule for physicians who stand in the shoes of their physician organization:** If a disclosing party is disclosing multiple compensation arrangements with physicians that violate section 1877 of the Social Security Act due solely to the fact that, pursuant to § 411.354(c), the physicians are deemed to stand in the shoes of the same physician organization that is a party to the noncompliant arrangement(s) with the entity, then the disclosing party may submit a single Physician Information Form that details the noncompliant compensation arrangement(s) with the physician organization along with a separate listing of each physician who is deemed to have the same noncompliant compensation arrangement(s) with the entity as the physician organization and the period(s) of noncompliance for each physician. The listing of physicians should include: (1) the names and NPIs of each physician who stood in the shoes of the physician organization during the lookback period; (2) the period(s) of noncompliance for each physician relative to each noncompliant compensation arrangement disclosed; and (3) any other relevant information that is unique to one of the physicians who stands in the shoes of the physician organization, such as an explanation that the physician became an owner of or left the physician organization on a certain date, resulting in a change in his or her status as standing in the shoes of the physician organization. See also the SRDP FAQs on the Physician Self-Referral Law page on the [CMS website](#).

- d. Financial Analysis Worksheet:** The Financial Analysis Worksheet quantifies the overpayment for each physician included in the disclosure who made referrals in violation of section 1877 of the Act. Disclosing parties only report overpayments in Medicare Parts A and B through the SRDP. CMS does not directly pay providers and suppliers for services furnished under Medicare Parts C or D or Medicaid. Therefore, the SRDP is not the appropriate administrative remedy for overpayments arising from services furnished pursuant to prohibited referrals if the services are paid for under Medicare Parts C or D or Medicaid. The financial analysis is limited to the 6-year look back period at § 401.305(f). The Financial Analysis Worksheet must be submitted in Microsoft Excel®-compatible format. The Financial Analysis Worksheet is attached to this document.
- e. Certification:** The initial disclosure and any related supplemental submission must include a certification signed by the disclosing party's Chief Executive Officer, Chief Financial Officer, or other individual who is authorized by the disclosing party to disclose the matter to CMS and to certify the truthfulness of the information contained in the disclosure. The signed certification must state that, to the best of the individual's knowledge, the information provided contains truthful information and is based on a good faith effort to bring the matter to CMS' attention for the purpose of resolving the disclosed potential liabilities relating to the physician self-referral law.

## **B. Instructions for Submitting the Disclosure**

The complete disclosure and all relevant supporting documents must be submitted electronically to [1877SRDP@cms.hhs.gov](mailto:1877SRDP@cms.hhs.gov).

When the disclosing party submits a disclosure electronically, CMS will immediately send a response email acknowledging receipt of the submission. If you have submitted a disclosure that is encrypted or otherwise protected, send a separate email to [1877SRDP@cms.hhs.gov](mailto:1877SRDP@cms.hhs.gov), including the word "ENCRYPTION" in the subject line, which identifies the contact person for the submission. After reviewing the submission, CMS will send a letter to the disclosing party or its representative either accepting or rejecting the disclosure. In some cases, CMS may request additional information prior to determining whether to accept or reject the disclosure.

## **C. Obligation to Update**

If, after the disclosure is made to CMS, the disclosing party files for bankruptcy, undergoes a change of ownership, or changes the designated representative, the disclosing party must inform CMS of the changes within 30 days. Updates must be submitted by e-mail to the following address: [1877SRDP@cms.hhs.gov](mailto:1877SRDP@cms.hhs.gov). Include the word "UPDATE" in the subject of the e-mail.

## **V. VERIFICATION**

Following the receipt of a disclosing party's submission, CMS will begin its verification of the disclosed information. The timeframe for CMS' verification effort will depend, in large part, upon the quality and thoroughness of the submissions received. Matters uncovered during the verification process, which are outside of the scope of the disclosure being verified, may be treated as new matters outside the SRDP.

To facilitate CMS' verification process, CMS must have access to all financial statements, notes, disclosures, and other supporting documents without the assertion of privileges or limitations on the information produced. In the normal course of verification, CMS will not request production of written communications subject to the attorney-client privilege. However, there may be documents or other materials, which CMS believes are critical to resolving the disclosure that may be covered by the attorney-client privilege. CMS will discuss with a disclosing party's counsel ways to gain access to the underlying information without waiver of protections provided by an appropriately asserted claim of privilege.

CMS may request additional information, such as financial statements, income tax returns, and other documents, if needed. If additional information is requested, a disclosing party will be given at least 30 days to furnish the information.

## **VI. PAYMENTS**

Because of the need to verify the information provided by a disclosing party, CMS will not accept payments of presumed overpayments determined by the disclosing party prior to the completion of CMS' review. However, the disclosing party may place funds in an interest-bearing escrow account to ensure adequate resources have been set aside to repay amounts owed.

While the matter is under CMS review, the disclosing party must refrain from making repayments relating to the disclosed matter to the Federal health care programs or their contractors without CMS' prior consent. If CMS consents, the disclosing party will be required to acknowledge in writing that the acceptance of the payment does not constitute the Government's agreement as to the amount of losses suffered by the programs as a result of the disclosed matter, and does not relieve the disclosing party of any criminal, civil, or civil monetary penalty liability, nor does it offer a defense to any further administrative, civil, or criminal actions against the disclosing party. We remind disclosing parties that section 1877(g)(2) of the Act requires that any amounts collected from individuals that were billed in violation of the physician self-referral law must be refunded to the individuals on a timely basis.

## VII. COOPERATION AND REMOVAL FROM THE SRDP AND TIMELINESS OF DISCLOSURE

The disclosing party's diligent and good faith cooperation throughout the entire process is essential. Accordingly, CMS expects to receive documents and information from the disclosing party that relate to the disclosed matter without the need to resort to compulsory methods. If a disclosing party fails to work in good faith with CMS to resolve the disclosed matter, the lack of cooperation will be taken into account in CMS' resolution of the matter. Likewise, the failure to update CMS regarding changes in ownership, bankruptcy filing, or changes in the designated representative will be taken into account in assessing the disclosing party's cooperation. The intentional submission of false or otherwise untruthful information, as well as the intentional omission of relevant information, will be referred to DOJ, OIG, or other Federal agencies and could, in itself, result in criminal and/or civil sanctions, as well as exclusion from participation in the Federal health care programs. Furthermore, it is imperative for disclosing parties to disclose overpayments in a timely fashion once identified. As stated above, section 6402 of the ACA establishes a deadline for reporting and returning overpayments by the later of: (1) the date which is 60 days after the date on which the overpayment was identified; or (2) the date any corresponding cost report is due, if applicable.

## VIII. FACTORS CONSIDERED IN REDUCING THE AMOUNT OWED

The factors CMS may consider in reducing the amount otherwise owed include, but are not limited to: (1) the nature and extent of the improper or illegal practice; (2) the timeliness of the self-disclosure; and (3) the cooperation in providing additional information related to the disclosure. Although CMS may consider these factors in determining whether reduction in any amounts owed is appropriate, CMS is not obligated to reduce any amounts due and owing. CMS will make an individual determination as to whether a reduction is appropriate based on the facts and circumstances of each disclosed actual or potential violation. The nature and circumstances concerning a physician self-referral violation can vary given the scope of the physician self-referral law and the health care industry. Given this variability, CMS evaluates each matter in order to determine the severity of the physician self-referral law violation and an appropriate resolution for the conduct.

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**PRA Disclosure Statement:** According to the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number. The valid OMB control number for this information collection is 0938-1106. The time required to complete this information collection is estimated to average 50 hours per response, including the time to review instructions, search existing data resources, gather the data needed, and complete and review the information collection. If you have comments concerning the accuracy of the time estimate(s) or suggestions for improving this form, please write to: CMS, 7500 Security Boulevard, Attn: PRA Reports Clearance Officer, Mail Stop C4-26-05, Baltimore, MD 21244-1850.  
**\*\*CMS Disclaimer\*\* Please do not send applications, claims, payments, medical records or any documents containing sensitive information to the PRA Reports Clearance Office. Please note that any correspondence not pertaining to the information collection burden approved under the associated OMB control number listed on this form will not be reviewed, forwarded, or retained.**

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## CMS VOLUNTARY SELF-REFERRAL DISCLOSURE PROTOCOL: CHECKLIST

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### CHECKLIST OF REQUIRED ITEMS FOR A COMPLETE SUBMISSION:

SRDP Disclosure Form

Physician Information Form(s) (unless the disclosure qualifies for the special rule for physicians who stand in the shoes of their physician organization noted above at Section IV.A.2.c, the disclosing party must submit one Physician Information Form for each physician included in the disclosure who made referrals in violation of section 1877 of the Act)

**OR**

The Group Practice Information Form

Financial Analysis Worksheet, submitted in Microsoft Excel®-compatible format

Certification

The disclosing party may also submit an optional cover letter. All the items listed above (and the optional cover letter, if included) must be submitted electronically to [1877SRDP@cms.hhs.gov](mailto:1877SRDP@cms.hhs.gov).

### **Obligation to update**

Disclosing parties are reminded of the obligation to update the disclosure if the disclosing party files for bankruptcy, undergoes a change of ownership, or changes its designated representative. The update must be submitted electronically to [1877SRDP@cms.hhs.gov](mailto:1877SRDP@cms.hhs.gov) within 30 days of the change. Include the word "UPDATE" in the subject line of the e-mail.

## SRDP DISCLOSURE FORM: CMS-10328

### I. DISCLOSING PARTY

1. Legal Business Name

2. "Doing Business As" name (if applicable)

3. Address

City	State	Zip code
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4. CMS Certification Number (CCN)

5. National Provider Identifier(s) (NPI)

6. Tax Identification Number (TIN)

7. Is the disclosing party affiliated with a network or system? **Note:** If multiple entities from a network or system are submitting self-disclosures, each entity that is separately enrolled in Medicare must submit a separate disclosure.

Yes No

If yes, provide the name of the network or system:

### II. DESIGNATED REPRESENTATIVE

1. Name

Law firm of designated representative (if applicable)

2. Address

City	State	Zip code
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3. Phone Number (enter numbers only)

4. Email

### III. Pervasiveness of Noncompliance

For purposes of the SRDP, pervasiveness means how common or frequent the disclosed noncompliance was in comparison with similar financial relationships between the disclosing party and physicians.

**Note:** For disclosures of noncompliance arising solely from the failure of a physician practice to qualify as a group practice under § 411.352, it is not necessary to complete this section, Pervasiveness of Noncompliance. The Group Practice Information Form collects all the required information on pervasiveness.

For all remaining forms of noncompliance, determine the type(s) of noncompliance being disclosed (i.e., compensation arrangement failing to satisfy an applicable exception at § 411.357, ownership or investment interest failing to satisfy an applicable exception at § 411.356, or the provision of services failing to satisfy an applicable exception at § 411.355), and report the pervasiveness of the noncompliance relative to the disclosing party's similar financial relationships (in the case of compensation arrangements or ownership or investment interests) or similar services furnished (in the case of designated health services that failed to meet an applicable exception at § 411.355). When reporting more than one type of noncompliance, the pervasiveness of the noncompliance may be reported by type of noncompliance or in the aggregate. For disclosures of noncompliant compensation arrangements, do not include arrangements involving nonmonetary compensation or medical staff incidental benefits in the determination of the pervasiveness of the noncompliance, unless the disclosed noncompliance resulted from a failure to comply with § 411.357(k) or § 411.357(m). The disclosing party may provide a reasonable estimate of the pervasiveness of noncompliance. If relying on estimates, please indicate that estimates were used and explain how the estimates were calculated.

The following examples may be helpful.

- The hospital has numerous compensation arrangements with physicians. We estimate that the noncompliant compensation arrangements disclosed herein represent less than 3 percent of all financial relationships with physicians.
- Six of the hospital's 30 call coverage arrangements (20 percent) failed to satisfy the requirements of the exception for personal service arrangements at § 411.357(d) or fair market value compensation at § 411.357(l). The hospital had no other financial relationships with referring physicians.
- The hospital has 25 physician owners. Each physician owner had an ownership or investment interest during the entire lookback period. One of the physician owners was not authorized to perform services at the hospital as required at § 411.356(c)(3)(i) for a period of six months during the lookback period.
- In 150 instances during a six-month period, the group practice failed to provide the notice required at § 411.355(b)(7). We reviewed the medical records and determined that this represents approximately 10 percent of the services subject to the notice requirement that were furnished by the group practice during the same six-month period.
- The physician practice provided nonmonetary compensation to 50 referring physicians who were not part of the physician practice during calendar year 2015. The physician practice exceeded the annual limit on nonmonetary compensation with respect to two physicians. Neither physician returned the excess nonmonetary compensation during the period established at § 411.357(k)(3).

**Note on the application of the "stand in the shoes" provisions at § 411.354(c):** The "stand in the shoes" provisions determine how arrangements with physician organizations should be counted. If there is a compensation arrangement with a physician organization, the arrangement is deemed to be an arrangement with all the physicians who stand in the shoes of the physician organization. For example, assume that a party is disclosing a noncompliant lease arrangement with a physician organization, and that the organization consists of three owners (mandatorily standing in the shoes of the organization pursuant to § 411.352(c)(1)(ii)(B)) and two non-owners who are not permissively standing in the shoes of the organization. For purposes of the SRDP, this should be counted as three arrangements, because the arrangement with the organization is deemed to be an arrangement with the physicians standing in the shoes of the organization.

The following example illustrates the application of the "stand in the shoes" provisions:

- During each year of the lookback period, the disclosing entity was a party to approximately 100 compensation arrangements with referring physicians or their immediate family members, after considering the application of the "stand in the shoes" rules. During the lookback period, the disclosing entity was a party to approximately 300 compensation arrangements, after considering the application of the "stand in the shoes" rules, as some arrangements lasted more than one year. These included compensation arrangements for the rental of office space, call coverage arrangements, medical directorships, and other personal service arrangements. The disclosed noncompliance relates to a total of eight compensation arrangements (two directly with individual physicians and one with a six-owner physician organization). The eight arrangements were noncompliant for a total of 90 out of 576 potential months during the lookback period (8 arrangements x 72 months each in the lookback period).



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Report the pervasiveness of the noncompliance in the space provided below. The disclosing party may also provide additional details and context to help CMS evaluate the pervasiveness of the noncompliance.

Attach additional pages if necessary.

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## IV. OTHER COMPLIANCE ISSUES AND ACTIVITIES

**1. Current government inquiry:** Indicate whether the disclosing party has knowledge that the disclosed conduct is under current inquiry by a Government agency or contractor. If the disclosing party has knowledge of an inquiry, identify the Government agency or contractor, and the individual representatives involved, if known. The disclosing party must also disclose whether it is under investigation or other inquiry for other matters relating to a Federal health care program, including any matters it has disclosed to other Government entities, and provide similar information relating to those other matters.

**Current government inquiry:**      Yes      No

**If yes,** explain:

Attach additional pages if necessary.

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**2. History of similar conduct:** State whether the disclosing entity has a history of conduct similar to that being disclosed or any prior criminal, civil or regulatory enforcement action against it.

**History of similar conduct:**      Yes      No

**If yes,** explain:

Attach additional pages if necessary.

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**3. Steps taken to prevent future noncompliance:** State whether the disclosing party has taken any steps to prevent future noncompliance. If yes, briefly summarize what steps, if any, the disclosing party has taken. If no, briefly explain why the disclosing party believes that additional steps are not necessary.

**Steps taken to prevent future noncompliance:**      Yes      No

Explain:

Attach additional pages if necessary.

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## FINANCIAL ANALYSIS WORKSHEET: CMS-10328

### I. INSTRUCTIONS FOR THE FINANCIAL ANALYSIS WORKSHEET

#### A. Financial Analysis

The disclosing party must provide a financial analysis of the potential overpayment based on the 6-year lookback period at § 401.305(f). Disclosing parties only report overpayments in Medicare Parts A and B through the SRDP. CMS does not directly pay providers and suppliers for services furnished under Medicare Parts C or D or Medicaid. Therefore, the SRDP is not the appropriate administrative remedy for overpayments arising from services furnished pursuant to prohibited referrals if the services are paid for under Medicare Parts C or D or Medicaid. (Unless otherwise requested by CMS, disclosing parties are not required to report the actual amount of remuneration between the parties). The financial analysis worksheet must be submitted in Excel®-compatible format; please lock the worksheet for editing before submitting. For each physician included in the disclosure, the worksheet must include the following:

- Physician's name
- Physician's NPI
- Date that the overpayment associated with the physician was identified (see § 401.305(a)(2) for the definition of "identified")
- Overpayment arising from the physician's prohibited referrals, itemized by calendar year (i.e., January through December)
  - For the yearly itemization of the overpayment, the Worksheet must include 7 columns, each covering an entire calendar year, even if the 6-year lookback period only falls in a portion of a particular calendar year, and even if the disclosing party did not receive an overpayment during a particular calendar year.

**Example: Assume a party identifies an overpayment on May 14, 2016. The 6-year lookback period for this overpayment is May 14, 2010 through May 13, 2016. The Worksheet must include columns for the following calendar years: 2010, 2011, 2012, 2013, 2014, 2015, and 2016. For calendar year 2010 the disclosing party need only report prohibited referrals from May 14, 2010 through December 31, 2010, and for calendar year 2016 the disclosing party need only report prohibited referrals from January 1, 2016 through May 13, 2016.**

- For disclosures involving multiple physicians with overpayments identified on different dates, use the same table for all physicians. If necessary, add columns for additional calendar years to account for the 6-year lookback period for each physician.
 

**Example: Assume a party is disclosing 2 noncompliant arrangements, one identified on December 10, 2016 and the other on January 15, 2017. The Financial Analysis Worksheet must include columns for calendar years 2010 through 2017.**
- If there are no overpayments in a particular year (for example, if the financial relationship was compliant during that year, if there were no prohibited referrals for that year, or if there was no financial relationship between the parties for that year), leave the worksheet cell blank.
- There must be a final, total overpayment column for each physician, and the table must also include a row calculating total overpayment amount for all physicians covered by the disclosure.

#### B. Methodology

The Excel®-compatible Financial Analysis Worksheet must include a text box describing the methodology used to set forth the overpayment. The disclosing party must also indicate whether estimates were used, and, if so, how they were calculated.

**Example: The following Financial Analysis Worksheet illustrates the required formatting for the Excel®-compatible work sheet. In this example, assume a disclosure was submitted on April 10, 2016 disclosing noncompliant arrangements with Drs. A, B, and C. In addition, assume the following:**

1. For Dr. A, there was no noncompliant financial relationship between the disclosing party and Dr. A prior to May 1, 2013; the noncompliance was cured in 2015; and the overpayment was identified on February 18, 2016.
2. For Dr. B, the noncompliance began in 2009, prior to the opening of 6-year lookback period; the noncompliance was not cured until 2016; and the overpayment was identified on March 24, 2016.
3. For Dr. C, there was a noncompliant financial relationship between Dr. C and the disclosing party prior to 2010, but Dr. C did not make prohibited referrals to the disclosing party until October 2011; the arrangement terminated in 2015, and the overpayment was identified on April 5, 2016.

### II. SAMPLE FINANCIAL ANALYSIS WORKSHEET:

Physician Name	NPI	Date Over-payment Identified	CY 2010	CY 2011	CY 2012	CY 2013	CY 2014	CY 2015	CY 2016	TOTAL
Dr. A	xxxxxxxxxx	2/18/16	\$ -	\$ -	\$ -	\$ 100,000.00	\$ 100,000.00	\$ 100,000.00	\$ -	\$ 300,000.00
Dr. B	xxxxxxxxxx	3/24/16	\$ 25,000.00	\$ 10,000.00	\$ 75,000.00	\$ 50,000.00	\$ 50,000.00	\$ 50,000.00	\$ 10,000.00	\$ 270,000.00
Dr. C	xxxxxxxxxx	4/5/16	\$ -	\$ 5,000.00	\$ 25,000.00	\$ 20,000.00	\$ 20,000.00	\$ 20,000.00	\$ -	\$ 90,000.00
									Total:	\$ 660,000.00

**Methodology:** Actual data was used to determine the overpayment; estimates were not used.